

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY LUCKEY,

Plaintiff,

v.

CITY OF PORTERVILLE, et al.,

Defendants.

Case No. 1:23-cv-00551-BAM

**ORDER TO SHOW CAUSE WHY ACTION  
SHOULD NOT BE DISMISSED WITH  
PREJUDICE**

FOURTEEN (14) DAY DEADLINE

Plaintiff Anthony Luckey (“Plaintiff”), proceeding with counsel, filed the instant action on April 7, 2023. (Doc. 1.) By stipulation of the parties, Plaintiff filed a First Amended Complaint on August 14, 2023, and a Second Amended Complaint on September 6, 2023. (*See* Docs. 13, 16, 18, 20.) Defendants City of Porterville and Bruce Sokoloff (collectively “Defendants”) filed a motion to dismiss Plaintiff’s Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) on September 27, 2023. (Doc. 21.)

On September 29, 2023, the then-assigned district judge notified the parties that the motion to dismiss would be decided on the papers and that Local Rule 230, as revised March 1, 2022, would govern the filing of oppositions and replies.<sup>1</sup> (Doc. 22.) Local Rule 230(c) requires that opposition, if any, to the granting of the motion be filed and served no later than fourteen

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<sup>1</sup> The matter recently was reassigned to the undersigned Magistrate Judge for all further proceedings in this action, including trial and entry of final judgment, pursuant to 28 U.S.C. § 636(c)(1). (Doc. 30.)

1 (14) days after the motion was filed. L.R. 230(c). Local Rule 230(c) provides that the “failure to  
2 file a timely opposition may also be construed by the Court as a non-opposition to the motion.”  
3 L.R. 230(c). Plaintiff’s opposition or non-opposition to the motion to dismiss was due no later  
4 than October 11, 2023. No opposition has been filed.

5 Accordingly, it is HEREBY ORDERED that Plaintiff shall show cause by WRITTEN  
6 RESPONSE **within fourteen (14) days of service of this order** why the motion to dismiss  
7 should not be granted and the action dismissed with prejudice based on Plaintiff’s failure to file a  
8 timely opposition. Plaintiff may comply with the Court’s order by filing an opposition or  
9 statement of non-opposition to Defendants’ September 27, 2023 motion to dismiss.  
10 Alternatively, Plaintiff may file a notice of voluntary dismissal pursuant to Federal Rule of Civil  
11 Procedure 41(a)(1). Plaintiff is warned that failure to comply with the Court’s order will result in  
12 dismissal of this action with prejudice.

13 IT IS SO ORDERED.  
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15 Dated: March 21, 2024

16 /s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE

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